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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2958 of 1997

WITH

CIVIL APPLICATION NO. 4786 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SNESH RESORTS (PVT.) LTD.

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

Mr. D.N.Patel, A.G.P. for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 24/11/97

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside order dated April 15, 1997 passed by the Collector, Kheda, by which

order dated September 3,1996 granting lands bearing Block no.1141, 1095/2, 1097 and other 17 Blocks situated at village Gobalaj,Taluka : Matar, District : Kheda, to the petitioner is set aside.

The Government of Gujarat passed a resolution dated March 18, 1996 declaring its policy to grant lands for the purpose of establishing hotels, motels, restaurants, amusement parks etc. The resolution passed by the Government of Gujarat is produced at Annexure-A to the petition. In view of the declared policy of the State Government, the petitioner made an application dated June 14, 1996 to the Collector, Kheda for allotment of lands mentioned in the application which are situated in village Gobalaj, Taluka : Matar, District : Kheda. The application made by the petitioner is produced by the petitioner at Annexure-B to the petition. The petitioner has produced resolution dated June 28, 1996 passed by Gobalaj Gram Panchayat, which shows that lands mentioned therein were surrendered by the Gram Panchayat to Government for being granted to the petitioner. After processing the application of the petitioner, Collector, Kheda required the petitioner to deposit the amount of market price in the Government treasury and the case of the petitioner is that the amount was so deposited in the Government treasury by it on September 2,1996. The Collector, Kheda thereafter passed an order dated September 3,1996 granting lands to the petitioner subject to certain conditions enumerated therein. The order dated September 3,1996 is produced by the petitioner at Annexure-F to the petition. The petitioner has claimed that possession of the lands was handed over to the petitioner on September 4,1996 and mutation entry was also effected in revenue record by the competent authority. The Collector, Kheda has passed an order dated April 15,1997 by which grant made in favour of the petitioner vide order dated September 3,1996 is set aside, giving rise to present petition. The order passed by the Collector, Kheda dated April 15,1997 is produced at Annexure-J to the petition.

The grievance made by the petitioner is that before passing the impugned order the petitioner was not heard and, therefore, it should be set aside. It is relevant to note that grant of lands is made in favour of the petitioner in exercise of powers conferred on Collector by Section 37(1) of the Bombay Land Revenue Code, 1879 read with Rule-42 of the Gujarat Land Revenue Rules, 1972. The fact that the petitioner was not heard by the Collector, Kheda before passing the impugned order is not in dispute. The claim of the petitioner that the

petitioner has deposited an amount of Rs. 17,56,542/cannot be ignored. On the facts and in the circumstances of the case, I am of the view that before passing the impugned order, Collector, Kheda should have heard the petitioner. As the petitioner is not heard before passing the impugned order, the petition deserves to be accepted and the matter will have to be remitted to Collector for passing appropriate orders after hearing the petitioner.

So far as Civil Application no. 4786/97 is concerned, Shri Rameshbhai P.Patel, who is applicant therein, has prayed to implead him as one of the respondents in Special Civil Application no. 2958/97. By an order dated May 2, 1997, this Civil Application is directed to be heard with Special Civil Application no.2958/97. As the petition is being partly allowed, it is not necessary for the Court to decide issues raised therein and interest of justice would be served if the applicant of Civil Application no.4786/97 is directed to present his case before Collector,Kheda and Collector, Kheda is directed to decide the question whether applicant Mr. Patel should be heard or not, after taking into consideration the objections which may be raised by the petitioner i.e. Snesh Resorts (P) Ltd.

For the foregoing reasons, the petition partly succeeds. The order dated April 15, 1997 passed by the Collector, Kheda, which is produced at Annexure-J to the petition, is hereby set aside and quashed. The matter is remanded to Collector,Kheda for being decided afresh. It would be open to the petitioner to raise all pleas which are raised in the present petition and the Collector shall pass appropriate orders on merits and in accordance with law after hearing the petitioner as early as possible and preferably within one month from the date of this order. Similarly, Mr.Rameshbhai P.Patel, who has filed Civil Application no.4786/97 would also be entitled to make an appropriate application before the Collector for being heard in the matter and the Collector shall decide the question whether to hear applicant Mr. Patel or not, after considering the objections which may be raised by the petitioner i.e. Snesh Resorts (P) Ltd. Rule is made absolute accordingly,with no order as to costs in Special Civil Application no. 2958/97. Civil Application no.4786/97 also accordingly stands disposed of in light of observations made hereinabove, with no orders as to costs.

Office is directed to send writ to respondent no.2 immediately. It would be open to the petitioner to produce copy of the order before respondent no.2 for

necessary compliance.

patel